Comments to Proposed Changes to Sponsorship Application

I. INTRODUCTION

June 24, 2025

Submitted by email to infocollection@acf.hhs.gov

Re: Proposed Information Collection Activity: Unaccompanied Alien Children Sponsor Application Packet (Office of Management and Budget #0970-0278)

To Whom It May Concern:

We write on behalf of the National Center for Youth Law and Democracy Forward Foundation, class counsel in *Angelica S. v. HHS*, Case No. 25-1405 (D.D.C. 2025), to oppose the changes to the proof of identification and proof of income required documents in the proposed re-named Sponsor Application, SAP-3. These proposed documentation requirements mirror ORR's March 7, 2025, and April 15, 2025, revisions to ORR Policy Guide Sec. 2.2.4, which have already led to greatly increased lengths of stay for children in ORR custody and denials of release to otherwise qualified parents and other family members. Moreover, some of these changes are currently preliminarily enjoined by the Court in *Angelica S.*

ORR has a statutory and regulatory obligation to promptly place an unaccompanied child "in the least restrictive setting that is in the best interests of the child" and to "release a child from its custody without unnecessary delay." 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1201(a). This obligation applies to every individual child in ORR custody and ORR must therefore undertake individualized consideration of every child's potential sponsor or sponsors to determine the least restrictive setting in that child's best interests.

The proposed changes to the "Supporting Documents" section of the sponsorship application are not "necessary for the proper performance of the functions

of the agency," 44 U.S.C. § 3508, and in fact are inconsistent with ORR's legal duties. ORR has not provided sufficient justification for why the specific documents listed are the only acceptable documents for sponsors to prove their identity or financial ability to support a child. *See, e.g., Angelica S. v. HHS*, __ F.Supp.3d __, 2025 WL 1635369, at *7 (D.D.C. June 9, 2025). These documents are inaccessible to many if not most potential sponsors. Because ORR has already implemented its new documentation requirements before obtaining approval from the Office of Management and Budget, in violation of the Paperwork Reduction Act, we already know that these requirements have led to otherwise qualified sponsors being disqualified immediately without consideration of whether they are in fact suitable sponsors.

Although we limit our comments to the proof of identification and proof of income documents at issue in the *Angelica S.* litigation, we urge ORR and OMB to give serious consideration to the concerns raised by other commenters regarding additional changes to documentation requirements and other changes to the sponsor application packet.

Thank you for considering these comments.

Best regards,

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II. Commenting Parties

The **National Center for Youth Law ("NCYL")** is a non-profit law firm that has fought to protect the rights of children and youth for over fifty years. Headquartered in Oakland, California, NCYL leads high impact campaigns that weave together litigation, research, policy development, and technical assistance. NCYL also collaborates with public agencies to develop policies and practices to better support children and families. NCYL's Immigration Team works to ensure that immigrant children are able to live in communities rather than in government custody and have the resources they need to heal and thrive. NCYL is counsel for Plaintiffs in *Flores v. Bondi, Lucas R. v. Kennedy,* and *Angelica S. v. HHS.*

Democracy Forward Foundation ("DFF") is a nonprofit national legal organization that advances democracy and social progress through litigation, policy and public education, and regulatory engagement. DFF represents clients, including non-profits, local governments, tribes, small businesses, unions, and individuals, in challenging harmful and unlawful governmental action and in supporting beneficial governmental action. Its efforts on this score include dozens of cases involving administrative law, immigration law, and/or the Department of Health and Human Services. DFF is counsel for Plaintiffs in *Angelica S. v. HHS*.

III. COMMENTS ON PROPOSED RULE

A. ORR is Obligated to Provide Every Unaccompanied Child Individualized Consideration for Release in that Child's Best Interests

The Trafficking Victims Protection Reauthorization Act ("TVPRA") requires that each unaccompanied child "be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). ORR's Foundational Rule similarly provides that "ORR shall release a child from its custody without unnecessary delay," in order of preference first to a parent, then to a legal guardian, then to an adult relative, and then to other individuals or entities. 45 C.F.R. § 410.1201(a). Each individual unaccompanied child has a tremendous stake in the outcome of their sponsor's application and is legally entitled to individualized consideration of their best interests.

The proposed changes to the Sponsor Application's "Supporting Documents" requirements are inconsistent with ORR's legal obligations because they permit a sponsorship application to be rejected based only on the sponsor's inability to access certain specific identity and proof-of-income documents without holistic consideration of whether placement with the sponsor is in the child's best interests and without regard to whether the sponsor is a parent, legal guardian, or close relative. As discussed below, the specific documents listed are not tailored to ORR's sponsor vetting needs and are certainly not so essential that no alternative documentation can be considered.

ORR "must balance" its obligations to protect children from smugglers, traffickers, or other harm, "with its obligation to promptly place these minors 'in the least restrictive setting that is in the best interest of the child.'" *Angelica S.*, 2025 WL 1635369, at *1 (quoting 8 U.S.C. § 1232(c)(2)(A)). ORR can achieve both these statutory duties through individualized vetting of potential sponsors that ensures each child

receives a determination of the placement that is in that child's best interests. *Id.* at *12 ("Even without the new sponsor requirements, ORR retains its authority to conduct thorough assessments of sponsors on a case-by-case basis, using all of its resources and procedures already in place."). By contrast, categorical disqualification of parents and other potential sponsors because the potential sponsor cannot access certain documents is already causing children irreparable harm. *Id.* at *9.

Moreover, by elevating particular documentation requirements over all other sponsor suitability factors, ORR actively undermines its obligations to ensure children "are protected from traffickers and other persons seeking to" harm children. 8 U.S.C. § 1232(c)(1). When children's parents and closest relatives are disqualified based on their inability to access specific types of documents, case managers have encouraged children's families to identify *any* potential sponsor with the right documents, regardless of their relationship with the child. *See, e.g.*, Declaration of Deisy S. ¶ 25, *Angelica S. v. HHS.*, ECF No. 9-12 ("Deisy S. Decl."). Rather than releasing a child to the sponsor who is best positioned to care for the child and protect their interests, ORR's restrictive documentation requirements thus encourage release to less qualified sponsors with more attenuated relationships to the children they seek to sponsor.

Finally, as applied to disqualify otherwise qualified parents and close relatives, the proposed new documentation requirements impose a severe burden on children's and parents' right to family integrity by denying parents custody of their children—potentially permanently—and denying children the right to grow up with their parents or other family members. *See Moore v. City of E. Cleveland*, 431 U.S. 494, 504-06 (1977) ("The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition" and "the choice of relatives in this degree of kinship to live together may not lightly be denied by the State."); *Lucas R.*, No. 18-

5741, 2022 WL 2177454, at *14, *25 (C.D. Cal. Mar. 11, 2022) (children in ORR custody and close relative sponsors have significant constitutional interests in release and reunification); *see also Troxel v. Granville*, 530 U.S. 57, 64 (2000); *Stanley v. Illinois*, 405 U.S. 645, 657-58 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

B. The Proposed Proof of Identification Requirements Are Unlawful

The proposed Sponsor Application Supporting Documents page includes a new list of Acceptable Proof of Identity Documents. This list was copied from the U.S. Citizenship and Immigration Services ("USCIS") list of Form I-9 acceptable documents to establish identity and employment authorization. *See* Memorandum from Toby Biswas, Dir. Policy, UAC Bureau to Angie Salazar, Acting Director, ORR at 4, March 7, 2025, ECF No. 21-4, *Angelica S. v. HHS*, Case No. 25-1405 (D.D.C. May 23, 2025) ("Biswas Memo"); ORR Policy Guide § 2.2.4.

The USCIS list of acceptable proof of identity documents is not suited to ORR's need to verify the identity of potential sponsors and household members and unnecessarily delays release and family reunification in violation of the TVPRA and the Foundational Rule. A federal court has already held that ORR likely acted arbitrarily and capriciously in adopting this specific list of identity documents. *See Angelica S.*, 2025 WL 1635369, at *7. ORR must not finalize a new Sponsor Application with these unnecessarily restrictive identification requirements.

1. *ORR's proposed list of identity documents are not appropriate to ORR's stated purpose of verifying the identity of potential sponsors*

It is fundamentally inappropriate to import the USCIS Form I-9 requirements into ORR's application form because Form I-9 and ORR's sponsor application form serve very different purposes. *Id.* at *7 (ORR "does not explain how the I-9 documents—which are used for employment eligibility—are a rational choice to balance the competing interests of avoiding unnecessary delay and effectively preventing fraud.").

Form I-9 is specifically designed to verify work authorization. For this reason, the "List A Documents" that "Establish Both Identity and Employment Authorization" require that a foreign passport include proof of legal residency or work authorization.[1] There is no indication that USCIS determined that a foreign passport without proof of work authorization is invalid as a form of *identification*—it simply would not satisfy the purposes of the form. Although the "List B Documents" that establish identity do not specifically require proof of work authorization, they are generally accessible only to individuals with stable lawful immigration status in the United States. USCIS has no need to consider whether these forms of identification are accessible to individuals without work authorization because Form I-9 is specifically designed to exclude those individuals.

ORR's proposed Sponsor Application form, by contrast, requires identification documents to establish only "Proof of Identity for you and, as applicable, any household members." ORR's statutory and regulatory obligations are also focused on verifying identity and sponsor suitability—not immigration status or work authorization. *See* 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202(b); *see also* Preamble to Foundational Rule, 89 Fed. Reg. 34,442 ("The HSA and the TVPRA do not make any mention of a sponsor's potential immigration status as a prerequisite to receive an unaccompanied child into their custody and do not imbue ORR with the authority to inquire into immigration status as a condition for sponsorship.").

ORR's list of acceptable proof of identity documents must therefore be tailored to its stated purpose of establishing identity and to the needs and realities of the child welfare program that it is running, which are different from those of the I-9 employment

[1] *See also* U.S. Citizenship and Immigration Services, Form I-9 Acceptable Documents, https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents (last accessed May 24, 2025).

verification process. To balance its statutory obligations to vet sponsors and place children in accordance with their best interests, ORR must also consider what documents are in fact available to the population of potential sponsors and household members required to provide this information. Most of the potential sponsors of children in ORR custody or their household members are undocumented or lack stable immigration status. *See* Memorandum from Angie Salazar, Acting Director of ORR, to Andrew Gradison, Acting Assistant Sec. for Children and Families at 5, Apr. 1, 2025, *Angelica S. v. HHS,* ECF No. 21-5 ("Salazar Memo") (acknowledging "that the majority of potential sponsors engaging with UACB do not have work authorization"); Declaration of Mari Dorn-Lopez ¶ 8, *id.*, ECF No. 10-13; Smyers Decl. ¶ 7. To fulfill its obligation to release children without unnecessary delay to the placement in their best interests, ORR's documentation requirements must be accessible to undocumented sponsors and their household members.

By adopting Form I-9's Lists A and B, ORR categorically disqualifies many potential sponsors and keeps children in detention longer even though ORR can verify the sponsor's identity in other ways, without creating unnecessary delays. For example, there is no basis to categorically exclude a foreign passport as proof of identification for all sponsors simply because it does not have an accompanying immigrant visa or proof of work authorization. *See Angelica S.*, 2025 WL 1635369, at *7.

Should there be some question about whether a particular individual with a foreign identity document is who he or she says they are, ORR can require that individual to undergo a more thorough background check or ORR can consult with consulates or embassies, as it has established long-standing processes for doing. *See, e.g.*, Preamble to Foundational Rule, 89 Fed. Reg. at 34,445 (noting that ORR, "as appropriate in individual cases, [] may consult with the issuing agency (*e.g.*, consulate or embassy) of the sponsor's identity documentation . . . and may also conduct a more

extensive background check on the potential sponsor"); *see also* Declaration of Jenifer Smyers ¶ 13, *Angelica S. v. HHS*, ECF No. 10-14 ("Smyers Decl.") (noting ORR's relationship with consulates and embassies). That verifying foreign identity documents may take additional time in some cases is not a justification to categorically exclude foreign identity documents for all sponsors, which leads to keeping large numbers of children in detention for much longer periods of time or having children released to strangers over their parents or closer relatives. *Cf.* Biswas Memo at 3. *See Angelica S.*, 2025 WL 1635369, at *7.

2. *ORR's proposed list of identity documents unnecessarily delays release and family reunification*

Because ORR has already prematurely implemented its proof-of-identity and proof-of-income requirements before obtaining OMB's approval through the Paperwork Reduction Act process, *Angelica S*, 2025 WL 1635369, at *3 (describing February and April 2025 changes to documentation requirements), we already know that ORR's changes to its identification documentation requirements has created extraordinary delays in finding sponsors for children and pushes children to be sponsored by more distant relatives or non-relatives even though they have parents or closer relatives who are otherwise able to care for them.

ORR's data shows that the average length of care for children discharged from ORR custody has risen precipitously from 49 days in February 2025 to 191 days in May 2025. *See* ORR, Average Monthly Data, Fact Sheets and Data, https://acf.gov/orr/about/ucs/facts-and-data. The total number of children released to sponsors has dropped from 1,858 in February 2025 to 118 children in May 2025. *See* ORR, Fact Sheets and Data: Released to Sponsors, https://acf.gov/orr/about/ucs/facts-and-data. The average discharge rate has plummeted—from 2.6 in February 2025 to 0.5 in May 2025. *Id.*, Average Monthly Data. In April and May 2025 it was nearly as common for a child to be released to a Category 3 distant relative or unrelated sponsor

as it was for a child to be released to a Category 2 close relative—a sharp departure from prior months where Category 2 releases greatly outnumbered Category 3 releases. *Id.*, Released to Sponsors.

Children seeking release to a parent, former primary caregiver, or other sponsor had their family reunification processes stalled or stopped completely simply because their potential sponsor could not access the newly required identity documents. *See, e.g., Angelica S.*, 2025 WL 1635369, at *8 ("Although he had lived with his sister for two years without incident, Leo is now stuck in ORR custody without any potential sponsor because of the retroactive document changes.").

In many of these cases, ORR had already verified the sponsor's identity and the sponsor had already completed fingerprinting and in some cases home studies. *See, e.g.*, Declaration of Ximena L. ¶ 6 ("Ximena L. Decl."), *Angelica S. v. HHS*, ECF No. 9-15; Declaration of Sofia W. ¶¶ 4-6, *id.*, ECF No. 9-14; Declaration of Deisy S. ¶¶ 6-25, *id.*, ECF No. 9-12; Declaration of J.E.D.M. ¶ 6, *id.*, ECF No. 10-16. The unnecessarily restrictive nature of these identification requirements is clear as applied to sponsors whom ORR has already vetted because it demonstrates that ORR has multiple tools to verify sponsor identities. ORR is equally capable of vetting future potential sponsors who lack proof of work authorization or a U.S.-issued identification.

Given all the vetting tools available to ORR, it is arbitrary and capricious to disqualify sponsors based solely on their or their household member's inability to access specific forms of identification. *See Angelica S.*, 2025 WL 1635369, at *12 (noting ORR's authority to conduct thorough case-by-case assessments, even without its new proof-of-identity and proof-of-income policies).

C. The Proposed Proof of Income Requirements Are Unlawful

As with the proof of identity requirements, the proposed list of proof of income documents is unnecessarily restrictive and is unjustified by child welfare concerns. The

specific list of documents is limited to a tax return from the prior year, copies of paystubs for the past 60 days continuously, or an original letter from the individual's employer on company letterhead.

These documents are not accessible to sponsors who lack work authorization, whose income is below the tax filing limit, who were not in the United States the previous year, whose employers are not willing to provide information to ORR, whose employers do not have formal company letterhead, or who have experienced an interruption in their work for health or other reasons, even though these individuals may nevertheless be able to provide for the child. *See, e.g.*, Salazar Memo at 5 (acknowledging that "the majority of potential sponsors engaging with UACB do not have work authorization and may not be able to provide documentation required" under ORR's new proof of income requirements); Ximena L. Decl. ¶ 10 (mother unable to provide proof of income required under ORR Policy Guide Sec. 2.2.4 because of temporary medical issues).

ORR's regulations provide that ORR may require "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child." 45 C.F.R. § 410.1202(c). Despite ORR's acknowledgement in the regulations that it would be appropriate to consider "other information" indicating an ability to support the child, the list of supporting documents in the proposed sponsorship application is limited to proof of employment or income. There is no basis for ORR to exclude alternative reliable information of a sponsor's ability to care for the child, such as bank statements, attestations from other individuals willing to contribute to the care of the child, or other competent evidence.

As with proof of identification, ORR must be flexible in its initial proof of income documentation requirements to avoid denying release to the sponsor who is most capable of providing for the child's best interests. Indeed, ORR's own memo setting out

the justification for the new proof of income documentation requirements notes that denying a parent solely based on financial hardship "does not align with standard child welfare practices in the United States" and states that a "balanced approach" would include "a carve out for parents/legal guardians." Salazar Memo at 2. The memorandum also notes that stricter screening such as income verification is usually only required for *non-related* foster parents. *Id.*; *see also* Preamble to Foundational Rule (although employment is one permissible consideration in determining sponsor suitability, "ORR will not deny an otherwise qualified sponsor solely on the basis of low income or employment status"). Yet neither ORR Policy Guide Sec. 2.2.4 nor the proposed sponsorship application includes exceptions for parents or close relatives.

D. ORR's Proposed Documentation Requirements Impose Unnecessary Costs on the Agency

ORR's notice of proposed information collection acknowledges that the changes to the sponsorship application documentation requirements will lead to "a decrease in the number of sponsors applying to sponsor a child and an increase in the number care provider facilities." 90 Fed. Reg. 17,439. The implications of this acknowledgment are clear—fewer children will be released to sponsors and ORR will require additional capacity to maintain custody of an increased number of children for longer periods of time. When children who could be safely released to a sponsor are unnecessarily detained in ORR custody based solely on restrictive documentation requirements, ORR must continue to pay for their care and custody. This is contrary to children's best interests and will require significant and unnecessary expenditures of ORR funds.

IV. Conclusion

For the above stated reasons, we request that ORR withdraw its proposed changes to the Sponsorship Application and urge OMB to withhold its approval for such changes.